



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[USCG-2011-0231]

RIN 1625-AA01

Anchorage Regulations; Wells, ME

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; request for comments.

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SUMMARY: On January 6, 2012, we established three special anchorage areas in Wells Harbor, Wells, Maine, through a published final rule. The Marine Chart Division of the National Oceanographic and Atmospheric Administration (NOAA) advised the Coast Guard that the coordinates in the final rule for the three special anchorage areas were out of sequence and formed an hourglass shaped anchorage. This direct final rule corrects the sequence of the coordinates so that the anchorage area forms a box-like shaped anchorage.

DATES: This rule is effective **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via

<http://www.regulations.gov> on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we will withdraw this direct final rule and publish a timely notice of withdrawal in the Federal Register.

ADDRESSES:

You may submit comments identified by docket number USCG-2011-0231 using any one of the following methods:

- (1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

- (2) Fax: 202-493-2251.

- (3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor,  
Room W12-140, 1200 New Jersey Avenue SE., Washington, DC  
20590-0001.

- (4) Hand delivery: Same as mail address above,  
between 9 a.m. and 5 p.m., Monday through Friday, except  
Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION

section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. John J. Mauro, Waterways Management Branch Chief, First Coast Guard District; telephone 617-223-8355, e-mail [John.J.Mauro@uscg.mil](mailto:John.J.Mauro@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0231), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it

will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2011-0231) in the "Search" box and click "Search." Then click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2011-0231) in the "Search" box and click "Search." Then click "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### Public meeting

We do not now plan to hold a public meeting. But, you may submit a request for a public meeting using one of the four methods specified under ADDRESSES. Please explain why

you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05-55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, this rule will become effective as stated in the DATES section. In that case, approximately 30 days before the effective date, we will publish a document in the Federal Register stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the Federal Register announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was

the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

#### Basis and Purpose

The legal basis for this rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

This rule is intended to reduce the risk of vessel collisions by creating three special anchorage areas in the western, central and eastern portions of Wells Harbor creating anchorage for approximately 150 vessels.

#### Discussion of Rule

On January 6, 2012, we established three special anchorage areas in Wells Harbor, Wells, Maine through a published final rule (76 FR 76295). This action was necessary to facilitate safe navigation in that area and

provide safe and secure anchorages for vessels not more than 20 meters in length. The Coast Guard received no comments on this published final rule during the rulemaking process for it.

The Marine Chart Division of the National Oceanographic and Atmospheric Administration (NOAA) advised the Coast Guard that the coordinates in the final rule for the three special anchorage areas were out of sequence. When plotted individually and then connected, the coordinates are correct. However, in this case, the Coast Guard directed the mariner to plot the coordinates in a clockwise direction. When the mariner plots the anchorage as directed, the lines will cross and an hour-glass shaped anchorage area is formed instead of a more typical box shaped anchorage area. This is caused because the last two positions in each anchorage area are out of sequence. As a result, the mariner may become confused about what is the proper anchorage area. This rule is intended to put the coordinates for the three special anchorage areas in the proper clockwise sequence and to form a box shaped anchorage area.

All coordinates are North American Datum 1983 (NAD 83).

#### Regulatory Analyses

We developed this rule after considering numerous



statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is based in part upon the fact that Coast Guard received no comments on the published final rule that established the anchorage in this area with the out of sequence coordinates. The Coast Guard expects minimal additional cost impacts on fishing, or recreational boats anchoring because this rule would not affect normal surface navigation. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: normal surface navigation will not be affected as this area has been historically used as a mooring field by the Town of Wells and the number of vessels using the anchorage is limited due to depth (less than or equal to 18 feet).

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of recreational and small fishing vessels intending to anchor in Wells Harbor.

The rule would not have a significant economic impact on a substantial number of small entities for the following reasons: normal surface navigation will not be affected as this area has been historically used as a mooring field by the Town of Wells and the number of vessels using the anchorage is limited due to depth (less than or equal to 18 feet).

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply,

distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(a) of the Instruction because it involves an editorial procedure for these special anchorage grounds. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

#### PART 110--ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.9 to subpart A to read as follows:

§ 110.9 Wells Harbor, Maine.

(a) Anchorage "A". All of the waters enclosed by a line beginning at latitude 43° 19' 15.7" N, longitude 070° 33' 42.1" W; thence to latitude 43° 19' 15.7" N, longitude 070° 33' 40.3" W; thence to latitude 43° 19' 3.7" N, longitude 070° 33' 42.6" W; thence to latitude 43° 19' 2.6" N, longitude 70° 33' 45.7" W; thence to the point of beginning. This area is approximately 5,800 sq. yards, encompassing the central portion of Wells Harbor.

(b) Anchorage "B". All of the waters enclosed by a line beginning at latitude 43° 19' 11.1" N, longitude 070° 33' 49.8" W; thence to latitude 43° 19' 10.5" N, longitude 070° 33' 47.3" W; thence to latitude 43° 19' 8.3" N, longitude 070° 33' 47.3" W; thence to latitude 43° 19' 8.7" N, longitude 070° 33' 50.6" W; thence to the point of beginning. This area is approximately 25,000 sq. yards, encompassing the western portion of Wells Harbor.

(c) Anchorage "C". All of the waters enclosed by a line beginning at latitude 43° 19' 17.7" N, longitude 070° 33' 34.0" W; thence to latitude 43° 19' 18.4" N, longitude 070° 33' 32.9" W; thence to latitude 43° 19' 13.8" N, longitude 070° 33' 25.5" W; thence to latitude 43° 19' 13.0" N, longitude 070° 33' 26.2" W; thence to the point of beginning. This area is approximately 8,200 sq. yards, encompassing the eastern portion of Wells Harbor.



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Dated: April 19, 2012

James B. McPherson  
Captain, U.S. Coast Guard  
Acting Commander, First Coast Guard District

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